

## § 13.11

(d) Except as otherwise provided in this section, by failing to answer on time, the Defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the Initial Decision will become final and binding upon the parties 30 days after it is issued.

(e) If, before such an Initial Decision becomes final, the Defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the Defendant from answering, the Initial Decision will be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the Defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ will withdraw the Initial Decision in paragraph (c) of this section, if such a decision has been issued, and will grant the Defendant an opportunity to answer the Complaint.

(g) A decision of the ALJ denying a Defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 13.38.

(h) The Defendant may appeal to the Authority Head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 13.26 within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal will stay the Initial Decision until the Authority Head decides the issue.

(i) If the Defendant files a timely notice of appeal with the Authority Head, the ALJ will forward the record of the proceeding to the Authority Head.

(j) The Authority Head will decide expeditiously whether extraordinary circumstances excuse the Defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the Authority Head decides that extraordinary circumstances excused the Defendant's failure to answer on time, the Authority Head will remand the case to the ALJ with instructions to grant the Defendant an opportunity to answer.

(l) If the Authority Head decides that the Defendant's failure to answer on time is not excused, the Authority Head will reinstate the Initial Decision of the ALJ, which will become final

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and binding upon the parties 30 days after the Authority Head issues such decision.

### § 13.11 Referral of Complaint and answer to the ALJ.

Upon receipt of an answer, the Reviewing Official will refer the matter to an ALJ by filing the Complaint and answer in accordance with § 13.26.

### § 13.12 Notice of hearing.

(a) When the ALJ receives the Complaint and answer, the ALJ will promptly serve a notice of hearing upon the Defendant in the manner prescribed by § 13.8.

(b) Such notice will include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the Representative of the Government and of the Defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

### § 13.13 Parties to the hearing.

(a) The parties to the hearing will be the Defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

### § 13.14 Separation of functions.

(a) The Investigating Official, the Reviewing Official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the Initial Decision or the review of the Initial Decision by the Authority Head, except as a witness or a Representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.